

ELIZABETH McCLELLAN

IBLA 79-413

Decided February 7, 1980

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting a drawing entry card lease offer. NM-36148.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Words and Phrases

The term "signed and full executed" as used in 43 CFR 3112.2-1(a) includes the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Under 43 CFR 3102.6-1(a)(2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the

lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding.

APPEARANCES: Elizabeth McClellan, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This is an appeal from a decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting drawing entry card lease offer NM-36148. On February 13, 1979, the drawing entry card of Elizabeth McClellan was drawn first for parcel NM-448 in the February 1979 simultaneous filing procedure for noncompetitive oil and gas leases in the New Mexico State Office, Bureau of Land Management (BLM). 43 CFR 3112. Examination of the drawing entry card (DEC) showed that the signature of "Mrs. Elizabeth McClellan" was imprinted mechanically or by a rubber stamp, and was not an original signature.

Because of the use of this facsimile stamp, the State Office requested Elizabeth McClellan on March 8, 1979, to file (1) a statement stating all the circumstances under which the imprint was made and the offer formulated, and (2) a certified copy of the contract or agreement between applicant and individual, association or corporation under which such filing services are authorized to be performed on behalf of the applicant.

On April 2, 1979, Elizabeth McClellan filed her response stating that the facsimile signature was placed on the entry card by Oil and Gas Corporation of America (OGCA). She enclosed a copy of her service contract with that corporation along with a machine copy of a permission slip signed by both appellant and Joseph G. Pite, President of OGCA.

The New Mexico State Office followed with a decision of April 16, 1979, rejecting appellant's offer to lease for the reason that she had failed to comply with the mandatory requirements of 43 CFR 3102.6-1.

The State Office pointed out that this regulation requires evidence of the authority of the attorney-in-fact or agent to sign the offer and that the offer shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one.

The State Office determined that the entry card did not show that the facsimile was placed on the card by anyone other than the applicant; it did not show that it was accompanied by the statements required by 43 CFR 3102.6-1(a)(2); it did not show a reference to the serial number of the record in which the power of attorney or agent had been filed and did not show that such authority was still in effect.

The State Office acknowledged that in addition to Mrs. McClellan's April 2 response, the office had located another machine copy of the statement showing Mrs. McClellan's and Joseph G. Pite's names and that this machine copy was probably filed during the simultaneous filing period. BLM found this statement unacceptable for the stated reasons that (1) a machine copy is not sufficient under the regulations 43 CFR 3102.6-1(a)(2), as an original signature is required; (2) the statement is not dated; (3) the statement does not show that it was still in effect as of the date (January 15, 1979) the facsimile was stamped on the entry card; (4) the wording does not fully comply with the regulations 43 CFR 3102.6-1; (5) there is no reference or indication to show that the person whose name appears as president of Oil and Gas Corporation of America is actually an officer of the corporation authorized to act on its behalf; and (6) there is no reference on the machine copy of the statement to parcel NM-448.

Mrs. McClellan has appealed this decision contending that compliance is not required with 43 CFR 3102.6-1 because her DEC was filed by her attorney-in-fact and her signature was placed on the card using a signature stamp. She states:

Section 3102.6-1 covers only the situation where the offer is "signed by" an agent or attorney-in-fact. In this instance, my card was not "signed by" an agent or attorney-in-fact. The decision of the BLM therefore raises a question neither called for by the regulation nor answered by the provisions thereof.

[1] First, we reach the meaning of the word "signed" as it appears in the cited regulation. This Board has long held that the signature of the offeror on a simultaneous oil and gas lease entry card may be affixed by means of a rubber stamp if it is the intention of the offeror that such be his or her signature, Robert C. Leary, 27 IBLA 296 (1976); Evelyn Chambers, 27 IBLA 317 (1976); Mary Arata, 4 IBLA 201, 78 I.D. 397 (1971).

In Mary Arata, supra, while examining the term "signed and fully executed" we specifically stated:

There is an abundance of legal authority discussing and interpreting the terms "sign" and "signature." Many state and federal cases hold that the terms include any

memorandum, mark, or sign, written or placed on any instrument or writing with intent to execute or authenticate such instrument. It may be written by hand, printed, stamped, typewritten, or engraved. It is immaterial with what kind of instrument a signature is made.

* * * * *

The law is well settled that a printed name upon an instrument with the intention that it should be the signature of the person is valid and has the same effect as though the name were written in the person's own handwriting.

Id. at 203, 78 I.D. 398.

It necessarily follows that compliance with the cited regulation is required where a signature stamp is used: D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978).

[2] BLM cited several reasons for rejection, including that the wording of appellant's statement did not supply the information required by 43 CFR 3102.6-1(a)(2). That section of the regulations provides in pertinent part:

If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding.

Appellant's submission of a machine copy of a permission slip signed by her and the president of OGCA, Joseph G. Pite, indicates her permission for OGCA to use her facsimile signature to secure leases, that they will make the selections, and if successful, OGCA will have no financial interest in the lease.

The use of the machine copy statement is not precluded by the regulations, nor is there a requirement that the separate agency statement be dated. Lewis W. Peters, 44 IBLA 35 (1979). However, the statement must contain all the substantive material set forth in the regulation. In this instance there was no reference in the statement to any agreements or understanding as to possible interests in the

lease with any persons other than OGCA. Therefore, the wording of the statement was fatally defective. For this reason alone, the lease offer was properly rejected, and we need not consider the propriety of BLM's other reasons for rejection.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Newton Frishberg
Chief Administrative Judge

